

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

REUBEN LEWIS,

Plaintiff,

-against-

9:13-CV-1172 (LEK/TWD)

STANTON,

Defendant.

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**ORDER**

This matter comes before the Court following a Report-Recommendation filed on April 29, 2014, by the Honorable Thérèse Wiley Dancks, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 21 (“Report-Recommendation”). Judge Dancks recommends that Defendant’s Partial Motion to dismiss for failure to state a claim be granted as to: (1) Plaintiff’s claims against Defendant in his official capacity;<sup>1</sup> and (2) Plaintiff’s state law claims against Defendant in his personal capacity. Report-Rec. at 9.

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” FED. R. CIV. P. 72(b); L.R. 72.1(c). “If no objections are filed . . . reviewing courts should review a report and recommendation for clear error.” Edwards v. Fischer, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006); see also Cephas v. Nash, 328 F.3d 98, 107 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate

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<sup>1</sup> Although Defendant did not move for dismissal of Plaintiff’s federal law claims against Defendant in his official capacity, Judge Dancks recommends that the Court dismiss these claims *sua sponte* based on Eleventh Amendment sovereign immunity. Report-Rec. at 6-7 & n.3; see also 28 U.S.C. § 1915(e)(2).

judge's report waives further judicial review of the point."); Farid v. Bouey, 554 F. Supp. 2d 301, 306 (N.D.N.Y. 2008).

Plaintiff responded to the Report-Recommendation, but did not raise any objections. See Dkt. No. 22. Accordingly, the Court has reviewed the Report-Recommendation for clear error. Having found none, the Report-Recommendation is approved and adopted in its entirety.

Accordingly, it is hereby:

**ORDERED**, that the Report-Recommendation (Dkt. No. 21) is **APPROVED** and **ADOPTED in its entirety**; and it is further

**ORDERED**, that Defendant's Partial Motion (Dkt. No. 13) to dismiss is **GRANTED**; and it is further

**ORDERED**, that Plaintiff's (i) federal and state law claims against Defendant in his official capacity,<sup>2</sup> and (ii) state law claims against Defendant in his personal capacity are **DISMISSED without leave to amend**; and it is further

**ORDERED**, that Defendant must respond to Plaintiff's 42 U.S.C. § 1983 claim against him in his personal capacity in accordance with the Federal Rules of Civil Procedure; and it is further

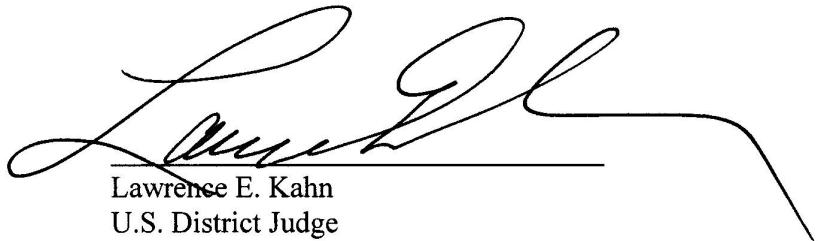
**ORDERED**, that the Clerk serve a copy of this Order upon the parties to this action in accordance with the Local Rules.

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<sup>2</sup> The Court notes that the New York State Court of Claims is the proper forum for Plaintiff's state law claims against Defendant in his official capacity. See N.Y. CORRECT. LAW § 24(2). Accordingly, although Plaintiff's state law claims against Defendant in his official capacity are dismissed without leave to amend, this dismissal is without prejudice to raising those claims in the New York State Court of Claims.

**IT IS SO ORDERED.**

DATED: July 07, 2014  
Albany, New York



A handwritten signature in black ink, appearing to read "Lawrence E. Kahn". Below the signature, the name is printed in a smaller, sans-serif font: "Lawrence E. Kahn" on the first line and "U.S. District Judge" on the second line.